

1978 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-11, 1978 WL 22497

Office of the Attorney General

State of South Carolina

Opinion No. 78-11

January 9, 1978

*1 TO: Paul W. Cobb
Chief Commissioner
Dept. of Hwys. and Public Transportation

QUESTION

Is the South Carolina Interagency Council on Public Transportation a 'state agency' as that term is defined in the State Register and Administrative Procedure Act, [Code of Laws of South Carolina, § 1-23-10 et seq. \(1977 Cum Supp.\)](#)?

AUTHORITIES

Code of Laws of South Carolina Sections
1-23-10 et seq. (1977 Cum Supp.)

1-23-10(1) (1977 Cum Supp.)

1-23-310(2) (1977 Cum Supp.)

1-23-10(4) (1977 Cum Supp.)

57-3-1010 (1977 Cum Supp.)

57-3-1050 (1977 Cum Supp.)

[Southern Ry. Co. vs. South Carolina Highway Department, 237 S.C. 75, 115 S.E. 2d 658 \(1960\)](#)

[State vs. Cain, 78 S.C. 348, 58 S.E. 937, 938 \(1907\)](#)

DISCUSSION

You have requested an opinion as to whether the South Carolina Interagency Council on Public Transportation is a 'state agency' and therefore subject to the provisions of the State Register and Administrative Procedures Act. [Code of Laws of South Carolina § 1-23-10 et seq. \(1977 Cum Supp.\)](#) [hereinafter APA] It is the opinion of this office that the South Carolina Interagency Council on Public Transportation is not a 'state agency'.

The South Carolina Interagency Council on Public Transportation [hereinafter Council] was established within the Department of Highways and Public Transportation by Code of Laws of S.C. § 57-3-1010 (1977 Cum Supp.). The Council, consisting of the Governor, Lieutenant Governor, the heads of nine state agencies directly involved in and concerned with public transportation, an appointee of each House of the General Assembly, and four Governor

appointees, was created for the purpose of advising the Department and the General Assembly on matters dealing with public transportation. In addition, [Code of Laws of South Carolina § 57-3-1050 \(1977 Cum Supp.\)](#) empowers the Council to review and comment on applications and preapplications for funds from state and federal governments to be used for public transportation study, planning, implementation or operation. These comments are to accompany their respective applications or preapplications when they are subsequently submitted to the state or federal agency or department from which assistance is sought.

[Code of Laws of South Carolina § 1-23-10\(1\) \(1977 Cum Supp.\)](#) of the APA defines a 'state agency' as: '[e]ach state board, commission, department, executive department, or office, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases.'

It is a fundamental principle that statutory creatures derive all their power from the Legislature. They have no inherent power. [Southern Ry. Co. vs. S.C. Highway Department, 237 S.C. 75, 115 S.E. 2d 685 \(1960\)](#). Therefore the question presented is whether the Legislature has granted the Council the authority to either determine contested cases or make regulations.

***2** [Code of Laws of South Carolina § 1-23-310\(2\) \(1977 Cum Supp.\)](#) of the APA defines a 'contested case' as: '[a] proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after opportunity for hearing.'

The Legislature has expressly granted the Council only the advisory authority noted above. 'Where a power is conferred by statute, everything necessary to carry out the power and make it effectual will be implied.' [State vs. Cain, 78 S.C. 348, 58 S.E. 937, 938 \(1907\)](#). The power to determine contested cases does not appear to be implied here because its absence does not preclude the Council from effectively exercising its express advisory powers.

[Code of Laws of South Carolina § 1-23-10\(4\) \(1977 Cum Supp.\)](#) of the APA defines 'regulation' as: '[e]ach agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. The term . . . does not include descriptions of agency procedures applicable only to agency personnel.'

It has been suggested that the Council may need to employ a uniform review procedure in order to effectively perform its express advisory duties. If this is correct, the power to do so is impliedly granted along with the expressed powers. [State vs. Cain](#), supra. Nevertheless, the resultant comments are advisory in nature and do not infer that the particular reviewing procedure has a direct effect on the general public. Moreover, the Council's reviewing procedures, applicable only to the Council's personnel, would appear to be expressly exempt from the APA's definition of 'Regulation.'

This opinion is predicated on the organization and powers of the Interagency Council as they presently exist. While the Council's status as an organ of the Department of Highways and Public Transportation is one criterion reviewed, it alone is not conclusive. The primary criterion is the powers delegated to the Council. Thus, amendment of the organization or powers of the Interagency Council may affect the applicability of this opinion as well as this office's recent opinion of September 14, 1977 concerning dual office holding and the South Carolina Interagency Council on Public Transportation.

CONCLUSION

The South Carolina Interagency Council on Public Transportation is not a 'state agency' as that term is defined in the State Register and Administrative Procedures Act, [Code of Laws of South Carolina § 1-23-10](#) et seq. (1977 Cum.Supp.)

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